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**MAR 16 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Levanduski :  
Application No. 10/026,420 : ON PETITION  
Filing Date: December 19, 2001 :  
Docket No.: 326.1001 :

This decision is in response to the "REQUEST FOR CORRECTED FILING RECEIPT," filed January 27, 2005. This petition is being treated under 37 CFR 1.10 as a petition to accord the above-identified application a filing date of December 18, 2001<sup>1</sup>.

Petitioners allege that the application was deposited into USPS Express Mail service on December 18, 2001. It cannot be determined on the face of the instant petition if petitioner is arguing that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation (37 CFR 1.10(c)) or if petitioner is arguing that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS.

Paragraph (a) of 37 CFR 1.10 states that:

"(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a)."

<sup>1</sup> It is acknowledged that numerous requests for corrected filing receipts have been submitted, however, this matter was not brought to the attention of the Office of Petitions until the request of January 27, 2005.

Paragraph (c) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that: (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date; (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Paragraph (d) of 37 CFR 1.10 states that:

"Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Director to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that: (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS; (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and (3) The petition includes a showing which establishes, to the satisfaction of the Director, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS."

Petitioners argue that the application papers were deposited into Express Mail service on December 18, 2001 and have presented a copy of the Express Mail label bearing Express Mail Label No. EL825523504US, the same Express Mail label number indicated on the application transmittal letter submitted with the application. However, the "date-in" and the USPS "stamp" shown on the copy of the Express Mail label are illegible. Accordingly, the application has been accorded a filing date of December 19, 2001.

Thus, any renewed petition must in accordance with 37 CFR 1.10(c) be accompanied by a legible copy of the USPS Express Mail Label wherein a "date-in" of December 18, 2001 can be readily determined or the petition must in accordance with 37 CFR 1.10(d) be accompanied by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS, such as petitioner's Express Mail Log, clearly establishing a date of deposit of December 18, 2001.

Any request for reconsideration of this decision must be filed within two (2) months of the mail date of the instant decision to be considered timely. See, 37 CFR 1.181(f). This time period may not be extended under 37 CFR 1.136.

Further consideration with respect to this matter should be addressed as follows:

By mail:

**Mail Stop Petition**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile:

(703) 872-9306

By hand:

U.S. Patent and Trademark Office  
220 20<sup>th</sup> Street S.  
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Crystal Plaza 2, Lobby, Room 1B03  
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'Alesia M. Brown', written in a cursive style.

Alesia M. Brown  
Petitions Attorney  
Office of Petitions